

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers
FROM/PHONE: Patrick Lynn, Police Chief/(954)693-8320
PREPARED BY: Adriennne
SUBJECT: Ordinance
AFFECTED DISTRICT: n/a

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: CODE AMENDMENT - A ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING CHAPTER 16, ARTICLE III OF THE TOWN OF DAVIE CODE OF ORDINANCES, ENTITLED "SEX OFFENDERS" BY AMENDING SECTION 16-31, ENTITLED "SEX OFFENDER RESIDENCY PROHIBITION" AND BY CREATING SECTION 16-32, ENTITLED "PROPERTY OWNERS PROHIBITED FROM RENTING REAL PROPERTY TO SEXUAL OFFENDERS AND SEXUAL PREDATORS; PENALTIES" TO CLARIFY THE RESIDENCY PROHIBITIONS APPLICABLE TO CONVICTED SEXUAL OFFENDERS AND SEXUAL PREDATORS INVOLVING MINOR VICTIMS; PROVIDING FOR ENFORCEMENT AND PENALTIES FOR VIOLATIONS; CONTAINING SEVERABILITY AND CONFLICT CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: To amend Chapter 16, Article III of the Town of Davie Code of Ordinances, entitled "Sex Offenders" by clarifying and expanding section 16-31, the sexual offender and sexual predator residency prohibition and to create a new section 16-32 to prohibit Davie property owners from knowingly renting property to convicted sexual offenders and sexual predators. The ordinance currently only applies to people convicted after October 01, 2004. This allows predators/offenders convicted prior to that date to move into Davie. The proposed ordinance eliminates this date so that no predators/offenders can move into Davie regardless of their conviction date. In the proposed ordinance a predator/offender cannot move from one residence to another in Davie. It prohibits property owners from renting to sexual predators/offenders with clarification and an enforcement process to be followed when someone is found to be in violation, which includes specific times, fines and penalties. The proposed ordinance also defines the terms, "Convicted", "Permanent residence" and "Temporary residence", none of which are included in the current ordinance. Amending this code serves to protect the citizens of Davie, in particular the children.

PREVIOUS ACTIONS: Approved on first reading on January 7, 2009.

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S): Motion to approve ordinance.

Attachment(s): the Ordinance

ORDINANCE _____

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES, TOWN OF DAVIE, FLORIDA, ENTITLED “SEX OFFENDERS” BY AMENDING SECTION 16-31, ENTITLED “SEX OFFENDER RESIDENCY PROHIBITION” AND BY CREATING SECTION 16-32, ENTITLED “PROPERTY OWNERS PROHIBITED FROM RENTING REAL PROPERTY TO SEXUAL OFFENDERS AND SEXUAL PREDATORS; PENALTIES” TO CLARIFY THE RESIDENCY PROHIBITIONS APPLICABLE TO CONVICTED SEXUAL OFFENDERS AND SEXUAL PREDATORS INVOLVING MINOR VICTIMS; PROVIDING FOR ENFORCEMENT AND PENALTIES FOR VIOLATIONS; CONTAINING A SEVERABILITY AND CONFLICT CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Town Council of the Town of Davie (hereinafter referred to as the “Town”) recognizes a concern among the citizens of the Town regarding convicted sexual offenders and sexual predators, who have victimized minor children, residing near children and places where children congregate within the Town; and

WHEREAS, other municipalities in Broward County, some of which border the Town, have expanded their sexual offender and sexual predator residency prohibitions; and

WHEREAS, as a result of other municipalities expanding their residency prohibitions, convicted sexual offenders and sexual predators may seek to move into the Town to establish permanent or temporary residency due to the Town’s current, less-stringent residency restriction; and

WHEREAS, the Town Council has an interest in protecting its citizens, in particular children who may be unaware of the presence of convicted sexual offenders and sexual predators; and

WHEREAS, the Chief of Police has recommended that the Town Code be amended to expand and clarify section 16-31, the sexual offender and sexual predator residency prohibition and to create a new section 16-32 to prohibit property owners from knowingly renting property to convicted sexual offenders and sexual predators, as more particularly set forth herein, because of the threat to the public health, safety and welfare; and

WHEREAS, the Town Council finds that the amendments to the Town Code, as more particularly set forth herein, serve to promote the health, safety, and welfare of the Town and thus serve a valid public purpose.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. AUTHORITY. The Town Council has the authority to amend and adopt this Ordinance pursuant to Article VIII of the constitution of the State of Florida.

SECTION 2. AMENDMENT/ADOPTION. The Town Council hereby incorporates by reference herein all of the findings set forth above as findings of the Town Council and hereby amends Section 16-31 to read as follows and adopts Section 16-32 to read as follows:

CHAPTER 16 OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE III. SEX OFFENDERS

Sec. 16-31. Sexual Offender and Sexual Predator Residency Prohibition; Penalties; Applicability

(a) **Definitions.** The following words, terms and phrases, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Convicted means a determination of guilt which is the result of a trial or the entry of a plea of guilty or *nolo contendere*, regardless of whether adjudication is withheld. A conviction for a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and a conviction in any state of the United States or other jurisdiction which resulted in the imposition of a sanction. A sanction includes, but is not limited to, a fine, court costs, costs of prosecution, probation, community control, parole, conditional release, controlled release, or incarceration in a state prison, federal prison, private correctional facility, jail, or local detention facility.

Permanent residence means a place where the person abides, lodges, or resides for five (5) or more consecutive days.

Temporary residence means a place where the person abides, lodges or resides for a period of five (5) or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, lodges or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

(b) Prohibitions. It is unlawful for any person who has been convicted at any time of a violation of Section 794.011, 800.04, 827.071, 847.0135 or 847.0145, Florida Statutes, or a similar offense in another jurisdiction, in which the victim of the offense was less than sixteen (16) years of age, to establish or maintain permanent residence or temporary residence within two thousand five hundred (2,500) feet of any school, designated public school bus stop, day care center, park (including linear parks), playground or other place where children regularly congregate.

(c) Penalties. A person who violates this ordinance shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment for a term not exceeding sixty (60) days, or by both such fine and imprisonment; for a second or subsequent conviction of a violation of this section, such person shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment for a term not exceeding twelve (12) months, or by both such fine and imprisonment. Once notified of the residency prohibition, the person shall have two (2) weeks to permanently vacate the premises. A person who fails to permanently vacate the premises within two (2) weeks after receiving the notice commits a separate violation of this section and shall be subject to arrest and shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment for a term not exceeding twelve (12) months, or by both such fine and imprisonment, and, in addition, shall be subject to the code enforcement provisions and procedures of the Town Code that allow the Town to seek relief as otherwise provided by law, and any civil remedies available under the law, including but not limited to a legal action to remove the person from the subject premises.

(d) Application. The provisions of this ordinance shall apply to persons residing in the Town, as well as persons entering the Town and persons changing residences within the Town. Changes to property within 2,500 feet of said person's existing and established

residence, provided such residence is continuous and is reported and registered pursuant to section 775.21, 943.0435, or 944.607, Florida Statutes, shall not form the basis for finding that said person is in violation of this section, provided, however, that the provisions of this ordinance shall apply upon the termination of any leasehold or landlord-tenant relationship, or the expiration of a lease.

(e) Severability. If any word, phrase, sentence, clause or other portion of this ordinance is determined to be invalid, void, or unconstitutional, the remainder of this ordinance shall remain in full force and effect.

Sec. 16-32. Property Owners Prohibited From Renting Real Property to Sexual Offenders and Sexual Predators; Penalties.

(a) Prohibitions. It is unlawful for any property owner, property manager, or his or her agent or assignee to knowingly let, rent, or allow to be occupied free of charge any property, place, structure, or part thereof, trailer or other conveyance, with the knowledge, either actual or constructive, that it will be used as a permanent residence or temporary residence by any person prohibited from establishing such permanent residence or temporary residence pursuant to any provision of this Code, if such property, place, structure, or part thereof, trailer or other conveyance, is located within two thousand five hundred (2,500) feet of any school, designated public school bus stop, day care center, park (including linear parks), playground or other place where children regularly congregate.

(b) Penalties. A person who violates this section shall be issued a notice to appear and, upon a first conviction, shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment for a term not exceeding sixty (60) days, or by both such fine and imprisonment; for a second or subsequent conviction of a violation of this section, such person shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment for a term not exceeding twelve (12) months, or by both such fine and imprisonment. In addition to the penalties set forth above, a person violating this section shall be subject to the code enforcement provisions and procedures of the Town Code that allow the Town to seek relief as otherwise provided by law.

(c) Severability. If any word, phrase, sentence, clause or other portion of this ordinance is determined to be invalid, void, or unconstitutional, the remainder of this ordinance shall remain in full force and effect.

SECTION 3. CONFLICTS. This Ordinance shall control over any Ordinance or Ordinances in conflict herewith unless otherwise noted therein.

SECTION 4. CODIFICATION. It is the intent of the Town Council of the Town of Davie, Florida, and it is hereby ordained that the provisions of this Ordinance

shall become and be made part of the Code of Ordinances of the Town of Davie, Florida;
that the sections of this Ordinance may be renumbered, reworded, or re-lettered to
accomplish such intent without affecting the enforceability of the Ordinance.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect
immediately upon its passage and adoption.

PASSED ON FIRST READING THIS ____ DAY OF _____, 2009

PASSED ON SECOND READING THIS ____ DAY OF _____, 2009

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2009